

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 26 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0131
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
EMMANUEL DEMITRIUS MCKINNEY,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20103000001

Honorable Deborah Bernini, Judge  
Honorable Jane L. Eikleberry, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender  
By David J. Euchner

Tucson  
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Emmanuel McKinney was convicted after a jury trial of second-degree burglary and possession of burglary tools. After he admitted having two historical prior felony convictions, the trial court sentenced him to enhanced, substantially mitigated, concurrent prison terms of 7.5 and 2.25 years. Counsel has filed a brief pursuant to *Smith v. Robbins*, 528 U.S. 259 (2000), *Anders v. California*, 386 U.S. 738 (1967), *State v. Nash*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has found no “arguably meritorious” issue to raise and requests that we “search the record for error.” McKinney has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to sustaining the verdicts. See *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005). So viewed, the evidence, including the testimony of a neighbor who witnessed the incident and police officers who had been involved in McKinney’s arrest, established McKinney, with the intent to commit a theft or felony, had entered the victims’ home by breaking a window with a rock, thereby committing the offense of second-degree burglary in violation of A.R.S. § 13-1507. The evidence also established McKinney had possessed burglary tools, specifically gloves he intended to use or used when committing the burglary, in violation of A.R.S. § 13-1505(A)(1) and (C). The record establishes prison terms were lawful, that is, within the statutory parameters, and were imposed in a lawful manner.

¶3 We have reviewed the entire record for reversible error and have found none. Therefore, we affirm the convictions and the sentences imposed.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge